

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**HB 400 - SB 1277**

March 11, 2015

**SUMMARY OF BILL:** Authorizes a judge to allow into evidence in criminal cases testimony from a witness if the testimony (1) was previously recorded, or (2) is by live video transmission during the trial.

Evidence submitted from previously recorded testimony must (a) consist of a video in which the accused was present with counsel in the presence of the judge while the testimony was being recorded; (b) accurately reflect that both witness and accused were able to view and hear each other; and (c) sufficiently enable the judge or jury to observe the witness during the testimony.

Evidence submitted from live video transmission during the trial must (a) be transmitted in such a manner that the witness and the accused can see and hear each other during testimony; (b) sufficiently enable the judge or jury to observe the witness during the testimony; and (c) accurately record that the witness and accused were face to face during the video-transmitted testimony.

Such video evidence is the only allowed recording of a witness testimony when the witness is unavailable under the rules of evidence, the witness is deployed on orders from the Governor of Tennessee or the President of the United States, good cause exists to excuse the witness from personally appearing before the court, and the witness has not testified in a prior proceeding.

Before allowing the evidence, the judge must make specific findings that the witness is unavailable under the rules of evidence; the witness has been deployed; another reason exists and it is in the best interests of justice or constitutes good cause; the witness is under oath and competent to testify; the testimony can be sufficiently recorded or transmitted at a hearing or trial; the testimony is recorded or transmitted so the witness and accused can view each other; and the video recording or transmission allows for a full and fair opportunity for cross-examination.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$22,500/District Attorneys/General Fund  
\$22,500/Indigent Defense Fund**

**Increase Local Expenditures – \$950,000/One-Time\***

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Assumptions:

- Currently, not every county has a courthouse with sufficient equipment to record, show, or stream video testimony. Under Tenn. Code Ann. § 16-2-505(d)(1), it is the responsibility of the counties comprising the judicial district to provide a judge with sufficient facilities to conduct the business and duties of the court. Some counties would have to install screens, cameras, speakers, computers, cameras, and internet connection.
- The Administrative Office of the Courts (AOC) confirms that a reasonable estimate is \$10,000 in increased county expenditures per county. The bill will result in an increase in one-time local expenditures of \$950,000 (\$10,000 x 95 counties).
- The equipment would require routine maintenance, but it is assumed that counties can handle the cost of maintenance within their existing resources.
- The bill will increase state expenditures as well because every criminal case is handled by the District Attorneys General Conference and a large amount of criminal cases are handled by the District Public Defenders Conference or by appointed private counsel.
- It is assumed that this procedure will be used by the district attorneys and public defenders in the state, but not enough to justify each office having an audiovisual expert. It is assumed that the district attorneys and public defenders will hire audiovisual experts on a case-by-case basis.
- The AOC confirms that a reasonable estimate is \$1,500 per case. It is assumed that 30 cases per year will require an audiovisual expert. It is assumed that district attorneys will use an expert in 15 cases and that public defenders will use an expert in 15 cases.
- The bill will increase state expenditures for district attorneys by \$22,500 (\$1,500 x 15). Expert costs for public defenders and appointed private counsel are paid through the Indigent Defense Fund. The bill will increase expenditures from the Indigent Defense Fund by \$22,500 (\$1,500 x 15).
- The bill will not impact the caseloads of the AOC, DAGC, or DPDC. It will impact their operations, but it is assumed that the impact will not be significant.

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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